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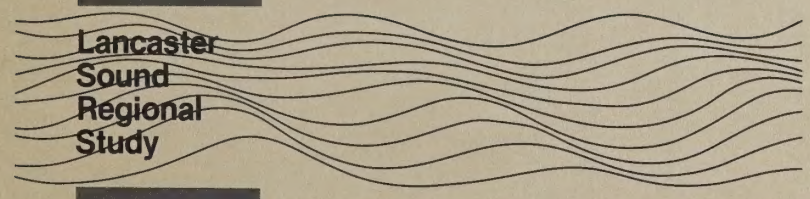
Jurisdictions and Legislation

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**Background
Report V**

Lancaster
Sound
Regional
Study



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Lancaster Sound Regional Study

Background Report No. V

JURISDICTIONS AND LEGISLATION OF THE

LANCASTER SOUND REGION

A Review of International, Federal and
Territorial Legislation as it relates to Use
Options by B. Gibson, Northern Renewable
Resources Branch, Department of Indian Affairs,
and Northern Development, and J. Reiskind,
Department of External Affairs.

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GENERAL INTRODUCTION

This report is one of five background reports prepared as part of the current study of marine and land-use options (Green Paper) for the Lancaster Sound region in the Northwest Territories. These reports are based on existing data, and together represent a body of information on which further discussion, analysis, and planning can be based. Information topics were selected on the basis of their relevancy to a particular resource use, or to provide a regional perspective of combined current or potential resource uses.

These reports and accompanying maps are being made available at this time in order to foster a thorough discussion by interested organizations, residents of the Lancaster Sound region, and concerned members of the public. Comments arising from the public discussion and any new information will be incorporated into a final report and map set to be published later.

The study of the Lancaster Sound region is being co-ordinated by the Department of Indian Affairs and Northern Development and carried out in co-operation with the Departments of Energy, Mines and Resources, Environment, Fisheries and Oceans, Transport, and the Government of the Northwest Territories.

Copies of other background reports are available by writing to:

Dr. Herman J. Dirschl,
Project Manager,
Lancaster Sound Regional Study,
Department of Indian Affairs and
Northern Development,
Room 631, North Tower,
Les Terrasses de la Chaudiere,
OTTAWA, Ontario
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or by telephone at (819) 997-0223.

Other Background Reports

Report I: Selected Physical Characteristics

Report II: Selected Biological Characteristics

Report III: Socio-Economic Characteristics and
Conservation

Report IV: Non-Renewable Resources and Transport

A Review of International, Federal, and Territorial Legislation as it Relates to Use Options

by B. Gibson and J. Reiskind

INTRODUCTION

This paper deals with the rather complex network of acts and regulations by which the Lancaster Sound area is governed. There are three levels of government involved: international bodies, the federal government, and the territorial government. The first section of this paper deals with the international rights and obligations and is concerned with sovereignty of arctic waters and jurisdiction over such matters as underwater mineral resources on the continental shelf and pollution control.

The second section deals with the federal and territorial legislation covering possible use of lands and resources in the area. This section outlines the various administrative agencies involved in the government of the Canadian Arctic and then discusses the legislation for seven main

areas: pollution control, non-renewable resource development, conservation areas, shipping, and wildlife, fisheries, and land management.

Introduction

INTERNATIONAL RIGHTS AND OBLIGATIONS

Canada considers the waters within the Arctic archipelago, including Lancaster Sound, to be internal waters of Canada, subject, like land territory, to Canadian sovereignty and thus to Canadian jurisdiction in all matters.

This sovereignty is, however, subject to certain international obligations to which Canada has agreed. Some are set out in domestic legislation, others are not. Examples of the former are the Migratory Birds Convention Act, the Whaling Convention Act, and the Ocean Dumping Control Act. Examples of the latter are the Canada/Denmark Marine Pollution Contingency Plan (see below) and the 1973 Agreement on the Conservation of Polar Bears.

In some cases, applicable international standards are only persuasive in nature and are not legally binding; for example, OECD recommendations on "Principles Concerning Transfrontier Pollution," of 14 November, 1974, and on "Equal Right of Access in Relation to Transfrontier Pollution," of 11 May, 1976. In addition, a United Nations environmental law is

drafting relevant principles on offshore mining and drilling within the limits of national jurisdiction, and Lancaster Sound has been considered for inclusion on the United Nations World Heritage List.

With respect to possible drilling activity in Baffin Bay, outside Lancaster Sound, it should be noted that Canada holds sovereign rights over the natural resources of the continental shelf beyond the territorial sea, up to the maritime boundary with Denmark and has jurisdiction over installations and devices necessary for the exploration and exploitation of these resources. These rights and this jurisdiction are set out in the 1958 Convention on the Continental Shelf to which Canada is party. This convention also stipulates, among other things, that exploitation of the natural resources of the continental shelf "must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea..." To deal with possible pollution in Baffin Bay, the Labrador Sea, Davis Strait, or Nares Strait resulting from petroleum exploration activities carried out in these bodies of water or nearby, Canada and Denmark established a marine pollution

contingency plan on 11 July, 1979; and Canada has also ensured that effective procedures are in place to provide adequate compensation to Danish citizens as a result of possible pollution damage arising from drilling activities in Davis Strait. This approach might usefully be considered for Lancaster Sound activities.

Negotiations at the Third Law of the Sea Conference aimed at elaborating a comprehensive new law of the sea convention have been underway since 1973. Based on provisions contained in conference, it is anticipated that any convention to emerge from the conference will not derogate from rights now exercised by Canada in Lancaster Sound, taking into account the historic basis of Canada's sovereignty claim and the special characteristic of these waters. Indeed, it is likely that some jurisdiction in the area now claimed by Canada will be explicitly set out for the first time in an international convention. Thus, for example, Article 234 of the negotiating text assigns to coastal states the right to establish and enforce laws and regulations for the prevention and control of marine pollution in ice-covered areas within their exclusive 320 km economic zones.

FEDERAL AND TERRITORIAL LEGISLATION

Existing Legislation and Administration Agencies

The Table of Public Statutes of Canada, issued on 26 March, 1979, lists over 400 statutes in force.

Of this number, approximately 51 could conceivably be considered relevant to all foreseeable developments in the Lancaster Sound area, if one was to cover every aspect in detail.

In addition to the federal statutes, there are at least 10 Ordinances of the Government of the Northwest Territories which could apply.

In theory, almost all the agencies of the Government of Canada are involved in administering rules and regulations that could influence the use of the Lancaster Sound region. Since the task of reviewing such a range of activities would be almost endless, the analysis and discussion has been limited to those agencies that play the most prominent roles in administering programs that have the greatest effects on the region. To achieve this, the most important functions carried out by government agencies operating in the area have been identified. These functions are based on existing and proposed activities.

The following very broad functions are those dealt with in this paper: pollution control, non-renewable resources development, conservation areas, shipping, wildlife management, fisheries management, and land management.

Having identified these functions, the existing legislative framework was reviewed. The government agencies with the most prominent roles in administering programs related to these functions are the departments of Fisheries and Oceans, Environment, Indian Affairs and Northern Development, Transport, the Government of the Northwest Territories, and the National Energy Board. These six government agencies administer a total of 30 pieces of legislation (24 federal statutes and 6 territorial ordinances) directly related to the seven identified functions. Appendix A lists the relevant legislation under the appropriate government agencies. For the purposes of this review, the various government organization acts and departmental acts were studied, but not included in the list. A similar approach was taken by Douglas M. Johnston et al (1975).

The following seven sections, with the accompanying graphs are designed to show how the various government agencies and the legislation

they administer relate to the identified functions. The overlaps in jurisdiction become readily apparent, especially from the graphs. In some instances the area of jurisdiction for certain legislation is not a clearly defined matter. In these cases, question marks may appear, or the bargraph is open-ended. The National Parks Act in the Conservation Area graph is an example. Based on the existing proposal for a marine park in the Lancaster Sound region, implications are that jurisdiction extends into the offshore regions.

There are two points that should be kept in mind when reviewing the legislation. One is the fact that hunting and fishing prohibitions as stated in the appropriate legislation do not apply to native people when the catch is for local consumption. One exception does exist under the Whaling Convention Act, under which any person must have a permit to hunt or kill a "Right Whale." The Bowhead Whale is considered a "Right Whale." The second point deals with the application of territorial ordinances. In areas of conflict between territorial ordinances and federal legislation, the federal legislation takes precedence (DIAND, 1980).

1. Pollution Control

The following four departments, Fisheries and Oceans, Environment, Indian Affairs and Northern Development, and Transport, and the Government of the NWT all have jurisdiction over pollution control.

Department of Fisheries and Oceans (DFO)
Fisheries Act. Under this Act, it is an offence to deposit any deleterious substance into waters frequented by fish. Regulations made pursuant to the Act prescribe what is classed as a "deleterious substance." The Act applies to inland waters and offshore fishing zones. The Territorial Sea and Fishing Zones Act prescribes "fishing zone six", which covers the area in question, and extends 200 nautical miles offshore.

Department of the Environment (DOE)
Ocean Dumping Control Act. In response to an international convention on ocean dumping, this Act was passed by the Parliament of Canada. Under the Act, any dumping at sea is prohibited unless a permit is granted. Exempt from the Act are any discharges incidental to the normal operations of a ship, unless the ship is

operated for the purpose of disposal at sea. The Act applies to the outer limits of the fishing zones of Canada; that is, for the Arctic, the limit is 200 nautical miles.

Canada Water Act. Part II of the Act allows the Minister of the Environment to enter into agreements with the appropriate agencies to designate certain waters as a water quality management area. Within any such management area, water quality may be controlled. The Act applies to any federal waters.

Clean Air Act. This Act provides for the control of emissions into the atmosphere.

In addition to the specific legislation listed above, the Environmental Protection Service administers various pollution control regulations made pursuant to the Fisheries Act.

Department of Indian Affairs and Northern Development (DIAND)

Northern Inland Waters Act. This act applies to all inland waters in the Yukon and Northwest Territories. Water pollution is controlled through a licencing system that applies to all water users.

Territorial Lands Act. The Act and pursuant regulations control pollution arising from land-use activities. Land-use permits are required for any operation and may contain conditions relating to waste disposal. The Act applies to areas up to the low-water mark.

Public Lands Grants Act. This Act provides for the disposition of public lands not already under other legislative control. For example, the Act may be applied to offshore oil and gas permits and leases. For this reason, the Act may be applied to offshore areas as far as offshore drilling is feasible.

Arctic Waters Pollution Prevention Act. This Act controls any deposit of waste into arctic waters. For the purposes of the Act, arctic waters extend offshore a distance of 100 nautical miles. DIAND jurisdiction applies to non-shipping activities only. As a point of interest, once a drillship has started drilling, it is not considered a ship for the purposes of the Act.

Oil and Gas Production and Conservation Act.

Oil and gas exploration and development are controlled under this Act. The Act and pursuant regulations also cover pollution control at the well site. Since the Act applies as far offshore on the continental shelf as it is technically feasible to drill, the area covered may extend beyond 200 nautical miles.

Department of Transport (DOT)

Arctic Waters Pollution Prevention Act. The Ministry of Transport is responsible for administering this Act as far as shipping activities are concerned. Regulations pursuant to the Act prescribe limits of liability on deposits of waste from ships and set out shipping safety control zones.

Canada Shipping Act. Part XX of the Act deals with marine pollution from vessels and applies throughout the 200 nautical mile fisheries zone in the Arctic.

Government of the Northwest Territories (GNWT)
Environmental Protection Ordinance. This Ordinance prohibits the discharge of contaminants to the environment.

2. Non-Renewable Resource Development

The Department of Indian Affairs and Northern Development, the Government of the NWT and the National Energy Board have jurisdiction over oil and gas exploration, while DIAND oversees mining matters, except for safety which comes under the territorial governments.

Oil and Gas

Department of Indian Affairs and Northern Development (DIAND)

Oil and Gas Production and Conservation Act.

This Act provides for the complete control of oil and gas exploration and development. The application of the Act extends as far offshore as it is technically feasible to drill on the continental shelf. Land dispositions for oil and gas activities are granted under the Territorial Lands Act, for onshore work, and the Public Lands Grants Act for offshore activities. Various regulations apply to oil and gas activities. Any activities involving water are regulated under the Northern Inland Water Act.

Government of the Northwest Territories (GNWT)

Area Development Ordinance.

The Commissioner may designate as a development area any area in the Territories where he considers it will be necessary, in the public interest, to regulate the development. Regulations may be made pursuant to this ordinance, prescribing conditions under which development may take place.

National Energy Board (NEB)

National Energy Board Act. The Act establishes the National Energy Board and gives the board specific roles. The board issues certificates of public convenience and necessity for the construction or operation of interprovincial pipelines. The board also approves pipeline utility crossings.

Mining

Department of Indian Affairs and Northern Development (DIAND)

The Canada Mining Regulations, pursuant to the Territorial Lands Act and the Public Lands Grants Act, is the key piece of legislation controlling mining in the Northwest Territories. Associated with this legislation, of course, are all the pollution prevention controls discussed earlier. The question of sea-bed mining has not yet arisen

in the north, but the possibility exists that such an activity could be carried out under the Public Lands Grants Act and the pursuant regulations.

Government of the Northwest Territories (GNWT)

Mining Safety Ordinance. This ordinance provides for the safety of mine workers.

3. Conservation Areas

Conservation areas and areas of historical importance come under the jurisdiction of DOE, DIAND, and the territorial government.

Department of the Environment (DOE)

National Parks Act. Under the Act, the Governor in Council may authorize the Minister of the Environment to acquire any lands or interests therein for the purposes of a park. Regulations made pursuant to the Act are used to control activities within a park. The jurisdictional limit of this Act is not definitely stated, although a proposal is under study for a marine park in the offshore regions of Lancaster Sound.

Canada Wildlife Act. The Minister of the Environment may be given, by the Governor in

Council, the management and control of any public lands deemed to be required for wildlife research, conservation, or interpretation.

Historic Sites and Monuments Act. The Minister may, with the approval of the Treasury Board, acquire any lands or interests therein for the preservation and management of historic sites.

Department of Indian Affairs and Northern Development (DIAND)

Territorial Lands Act. Lands may be withdrawn from disposal for conservation purposes.

Government of the Northwest Territories (GNWT)

Historical Resources Ordinance. The Commissioner may acquire places and sites of prehistoric or historic significance to the Territories.

4. Shipping

The Department of Transport is responsible for shipping in the Arctic and for pollution control connected with shipping.

Department of Transport (DOT)
Canada Shipping Act. This Act is primarily concerned with the construction, operation, and safety of Canadian ships.

Navigable Waters Protection Act. This Act authorizes the Minister of Transport to approve and, if necessary, alter any work that may interfere with navigation. This power also extends to the physical removal of anything interfering with navigation.

Arctic Waters Pollution Prevention Act. The Minister of Transport is responsible for administering that portion of the Act dealing with shipping activities.

Regulations pursuant to the Act prescribe liability limits for unauthorized deposits of waste and provide for the designation of pollution prevention officers. The Arctic Shipping Pollution Prevention Regulations establish what type of ships may navigate in arctic waters at certain times of year. The Shipping Safety Control Zones Order delineates safety zones for shipping in the Arctic. The Arctic Waters Pollution Prevention Act applies offshore to a 100 nautical miles limit.

Carriage of Goods by Water Act. This Act applies to the transportation of goods between points in Canada, and between Canada and any foreign port. The general purpose of the Act is to regulate the legal position vis-à-vis the ocean carrier and the shipper or consignee of the goods.

Government Harbours and Piers Act. This Act places the control of all harbours, wharfs, piers, and breakwaters constructed at the expense of Canada, except those connected with canals, the National Harbours Board and Commissions, under the Minister of Transport.

5. Wildlife Management

Management of wildlife falls under the jurisdiction of the Department of the Environment and the territorial government, with the latter taking precedence.

Department of the Environment (DOE)
Canada Wildlife Act and the Migratory Birds Convention Act. These two Acts provide for the management, conservation, and research on migratory birds in the North. As the prime responsibility for game management in the

North rests with the Government of the Northwest Territories, the Department of the Environment plays a supportive role in game management through research and the co-ordination of federal-territorial game problems. With particular reference to Polar Bears, the Department of the Environment carries out work in keeping with an international agreement on the conservation of Polar Bears, which Canada is party to.

Government of the Northwest Territories

(GNWT)

Wildlife Ordinance. This ordinance provides for the regulation of hunting, trapping, possessing, and selling game in the Territories and for the management of such game.

6. Fisheries Management

The management of fishing in the North falls under the Department of Fisheries and Oceans, including international agreements on whaling.

Department of Fisheries and Oceans (DFO)

Fisheries Act. This is a comprehensive

piece of legislation dealing with all aspects of fisheries and aimed at the protection, conservation, and preservation of the fisheries of Canada; for the purposes of the Act, fisheries includes marine mammals. Regulations made pursuant to the Act include specific regulations dealing with seals, Walruses, Beluga Whales, Narwhal, and others. The Act applies to inland fisheries and offshore fisheries to a distance of 200 nautical miles, as prescribed in the Territorial Sea and Fishing Zones Act.

Coastal Fisheries Protection Act. This Act applies to foreign fishing vessels and the taking of fish by such vessels. A system of licences and permits allows control over such activities in the fishing zones of Canada.

Whaling Convention Act. This Act prohibits the hunting and killing of any whale unless a licence or permit has been received. This Act was promulgated in response to an international convention and may be applied to carry out decisions of the International Whaling Commission.

7. Land Management

The Department of Indian Affairs and Northern Development together with the territorial government are responsible for land management in the North.

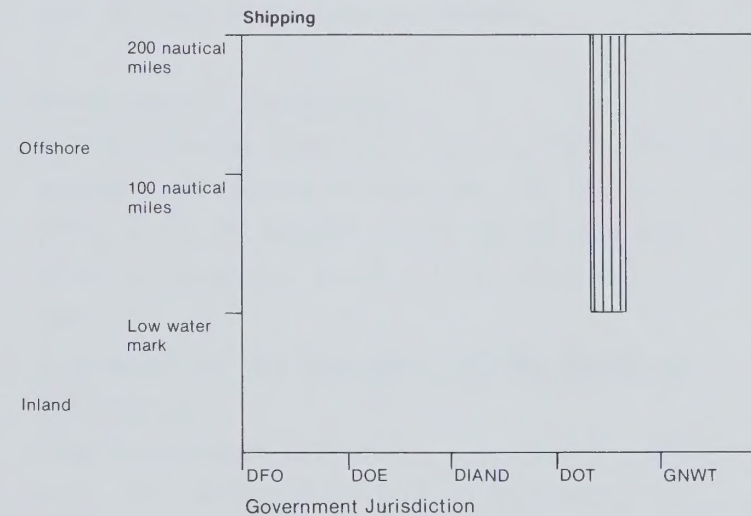
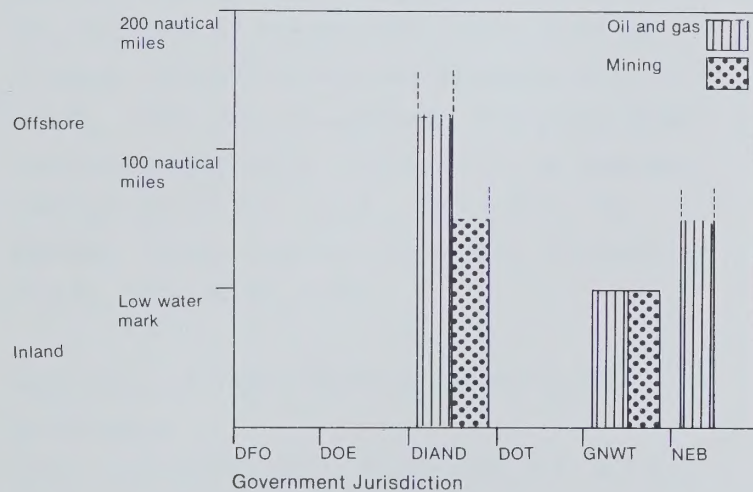
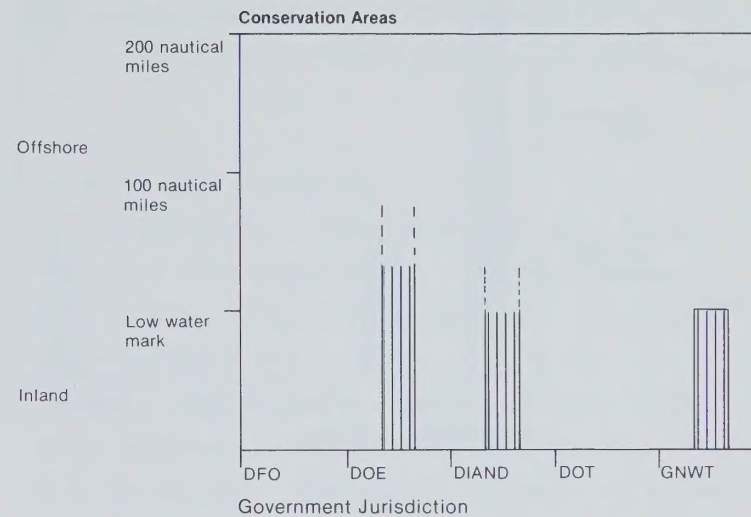
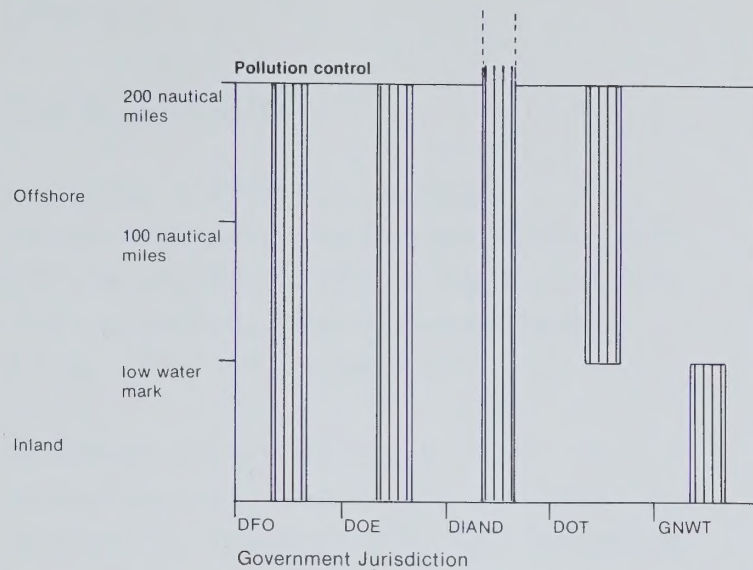
Department of Indian Affairs and Northern Development (DIAND)

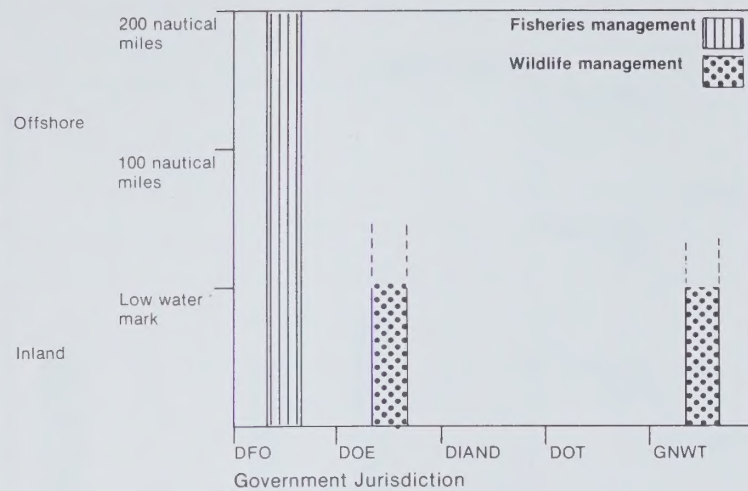
Territorial Lands Act. This Act applies to all lands in the North that are under the control, management, and administration of the Minister. The Act provides authority for dealing with the administration and protection of these lands. The Territorial Land Use Regulations, pursuant to the Act, require the issuing of land-use permits to control land-use activities. Such activities would include drilling operations, establishment of camps, seismic operations, work on mining claims, and the construction of access roads.

Government of the Northwest Territories (GNWT)

Area Development Ordinance. The Commissioner may designate as a development

area any lands under his control where he considers it will be necessary in the public interest to regulate the development of such lands. Regulations may be made pursuant to this ordinance prescribing conditions under which development may take place.





APPENDIX A

Federal Legislation

Department of Fisheries and Oceans

Coastal Fisheries Protection Act, R.S.C., 1970, C-21, as amended. Fisheries Act, R.S.C., 1970, F-14, as amended. Whaling Convention Act, R.S.C., 1970, W-8, as amended.

Department of the Environment

Canada Water Act, R.S.C., 1970, C.5, (1st Supplement). Canada Wildlife Act, Statutes of Canada, 1973-74, C.21, as amended. Clean Air Act, Statutes of Canada, 1970-71-72, C.47 as amended. Historic Sites and Monuments Act, R.S.C., 1970, H-6, as amended. Migratory Birds Convention Act, R.S.C., 1970, M-12, as amended. National Parks Act, R.S.C., 1970, N-13, as amended. Ocean Dumping Control Act, Statutes of Canada, 1974-75-76, C.55.

Department of Indian Affairs and Northern Development

Arctic Waters Pollution Prevention Act, R.S.C., 1970, C.2 (1st Supplement). Northern Inland Waters Act, R.S.C., C.28, (1st Supplement). Oil

and Gas Production and Conservation Act, R.S.C., 1970, O-4. Territorial Lands Act, R.S.C., 1970, T-6. Public Lands Grants Act, R.S.C., 1970, p-29.

Department of Transport

Arctic Waters Pollution Prevention Act, R.S.C., 1970, C.2 (1st Supplement). Canada Shipping Act, R.S.C., 1970, S-9, as amended. Carriage of Goods by Water Act, R.S.C., 1970, C-15. Navigable Waters Protection Act, R.S.C., 1970, N-19. National Transportation Act, R.S.C., 1970, N-17 as amended. Government Harbours and Piers Act, R.S.C., 1970, G-9, as amended.

Other Federal Legislation

National Energy Board Act, R.S.C., 1970, N-6, as amended. Northwest Territories Act, R.S.C., 1970, N-22, as amended. Territorial Sea and Fishing Zones Act, R.S.C., 1970, T-7, as amended.

Ordinances of the Government of the Northwest Territories

Area Development Ordinance, R.O., N.W.T., 1974, A-5. Environmental Protection Ordinance, R.O., N.W.T., 1974, E-3. Historical Resources Ordinance, R.O., N.W.T., 1974, H-2. Mining

Safety Ordinance, R.O., N.W.T., 1974, M-13.

Public Health Ordinance, R.O., N.W.T., 1974,

p-10. Wildlife Ordinance, 1978 (3), C.8 (from
1/7/79).

REFERENCES

Canada Gazette, Part III. 26 March 1979.

Statutes of Canada, 1978-79. Table of Public Statutes.

Department of Indian Affairs and Northern Development, Territorial Relations Division.
1980. Personal communication.

Johnston, Douglas M.; Pross, Paul A.; and McDougall, Ian. 1975. Coastal Zone: Framework for Management in Atlantic Canada. Institute of Public Affairs, Dalhousie University, Halifax, N.S., for Environment Canada.

Canada